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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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07/898,827 06/15/92 BARRIS

R MNROE.002A

RAMIREZ, E. EXAMINER

B3M1/1214

KNOBBE, MARTENS, OLSON AND BEAR
620 NEWPORT CENTER DRIVE
SIXTEENTH FLOOR
NEWPORT BEACH, CA 92660-8016

ART UNIT	PAPER NUMBER
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2314

DATE MAILED: 12/14/93

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 03 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input checked="" type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-20 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. ☐ Claims _____ have been cancelled.

3. ☐ Claims _____ are allowed.

4. ☒ Claims 1-20 are rejected.

5. ☐ Claims _____ are objected to.

6. ☐ Claims _____ are subject to restriction or election requirement.

☒ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

1. This Application has been examined.
2. The drawings filed on 6.15.92 have not been approved by the draftsman. See PTO-948.
3. Claims 1-20 are pending.
4. Claims 1-20 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(A) In claims 1, 8, and 17 the claimed invention recites that the communication system does not "substantially interfere []" with the operation of the computer. The claimed invention hinges its novelty on this capability. In the summary applicant states that "[t]he audio communication system of the present invention is designed to operate as a background application". The "substantially interfering" feature is not explained in the description or the claims to allow those in the art to definitely conclude its meaning.

In claim 15 the term "analogy" should be changed to analog.

In claim 3, the terms "to digital" should be deleted because the converter would be "a digital to analog to digital". I.E., digital to digital converter.

The claims not mentioned are rejected since these claims incorporate the deficiency of the rejected base claim.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

- A person shall be entitled to a patent unless --
6. (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
 7. Claims 2-14, and 17-20 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Swinehart et al. ("An Experimental Environment For Voice System Development").

Swinehart discloses like the claimed invention a communication system used in a computer network. Further, note that in figure 1 there is an audio responsive input ("microphone"), an audio output ("speakers"), and a controller coupled to the input and output. Further, note that the description of the "Etherphones" include a microcomputer, and controller. The claimed invention further recites that the operation does not "substantially interfere []" with software being processed. The definiteness of the recitation has been challenged, above. A careful reading of the Swinehart publication, and in particularly the window interface in figure 2 it appears that software is not "substantially interfere []" with when the communication is being performed.

The claimed invention is disclosed by Swinehart et al.

8. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention

was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

9. Claims 15-16 are rejected under 35 U.S.C. § 103 as being unpatentable over Swinehart et al. (see title above) and Tannenbaum (Computer Networks, pages 292-295).

Swinehart et al. ("Swinehart") disclose the invention substantially as claimed.

Swinehart does not disclose an "arbitration value".

The analysis is premised on the understanding that not only specific teachings of a reference but also reasonable inferences which the artisan would have logically drawn therefrom may be properly evaluated in formulating a rejection. In re Preda, 401 F.2d 825, 159 USPQ 342 (CCPA 1968) and in In re Shepard, 319 F.2d 194, 138 USPQ 148 (CCPA 1963). Skill in the art is presumed. In re Sovish, 769 F.2d 738, 226 USPQ 771 (Fed. Cir. 1985). Furthermore, artisans must be presumed to know something about the art apart from what the references disclose. In re Jacoby, 309 F.2d 513, 135 USPQ 317 (CCPA 1962). The conclusions of obviousness may be made from common knowledge and common sense without any specific hint or suggestion in a particular reference. In re Bozek, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969). Every reference relies to some extent on knowledge of persons skilled in the art to

complement that which is disclosed therein. In re Bode, 550 F.2d 656, 193 USPQ 12 (CCPA 1977).

We begin by noting that when "two or more stations decide to transmit simultaneously, there will be a collision. (Tannenbaum at 292). Further, when a collision occurs the data is mared by noise which is a byproduct of the collision. Further, the desire to avoid collisions has motivated different schemes for resolving disputes which arise from the collision. Applicant refers to the network where the transmission is being conducted as a "Common Network". The Ethernet is the most widely available network. It is assumed that when the term common network is used, it is referring to the Ethernet. Those in the art knowing that a collision is possible would be motivated to preserve data, to avoid the time consuming task of transmitting and aborting, and "the wasting a channel for a packet time", Tannenbaum at page 292, to use an arbitration scheme to settle collision disputes. On page 294 Tannenbaum in describing the Metcalfe et al. (1976) algorithm for collision arbitration discloses the increasing a "randomization interval". The "randomization interval" is the same as the "arbitration value" found in claim 15 (see figures 2-3 which discloses the transmission of contention slots with the data).

Therefore, because of Swinehart substantially discloses the invention, and since those in the art, at the time of the invention, are aware that a collision is possible and the common awareness of the arbitration scheme described by Tannenbaum, as of

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1978, the claimed invention would have been obvious to those of ordinary skill in the art.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner E.B. Ramirez whose telephone number is (703) 305-9786.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3800.

ER/hh
December 14, 1993



ELLIS B. RAMIREZ
PATENT EXAMINER
GROUP 2300